

HARTMAN UNDERHILL & BRUBAKER LLP

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HealthGuard of Lancaster, Inc.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
CIVIL ACTION

HEALTHGUARD OF LANCASTER,  
INC.,

Plaintiff

v.

MARK GARTENBERG;  
STEVEN GARTENBERG;  
MARK TISCHLER; GREENFIELD  
SPORTS MEDICINE & REHAB, P.C.;  
PREMIER SPORTS MEDICINE &  
REHAB CENTER, P.C. and MAIN  
LINE MEDICAL SERVICES, INC.

Defendants

No. 02-CV-2611

(Michael M. Baylson, J.)

**RULE 16.1(c) PRETRIAL MEMORANDUM OF  
HEALTHGUARD OF LANCASTER, INC.**

**I. NATURE OF ACTION**

HealthGuard of Lancaster, Inc. ("HealthGuard") brought suit against the Defendants to recovery payments made by HealthGuard on false insurance claims.

The causes of action asserted by HealthGuard are: (a) civil liability under the Racketeer

Influenced and Corrupt Organizations Act; (b) civil liability for insurance fraud under the Pennsylvania Crimes Code; (c) common law fraud; and (d) breach of warranty.

## **II. STATEMENT OF JURISDICTION**

The United States District Court for the Eastern District of Pennsylvania has jurisdiction over the claim asserted under the Racketeer Influenced and Corrupt Organizations Act pursuant to 28 U.S.C. §1331. The Court has jurisdiction over the supplemental state claims pursuant to 28 U.S.C. §1367. Venue for the dispute properly rests in the Eastern District of Pennsylvania because a substantial part of the events giving rise to the claims occurred in this District.

## **III. STATEMENT OF FACTS**

HealthGuard is a health maintenance organization serving approximately 100,000 members in central Pennsylvania. Members of HealthGuard receive medical services from participating health care providers. The participating health care providers submit claims to HealthGuard to obtain payment for services provided to HealthGuard members. When a health care provider submits a claim for payment, the health care provider warrants that the service was actually provided in the manner described in the claim for payment and that the services were medically necessary and appropriate for the HealthGuard member. Upon receipt of a claim, HealthGuard pays

the claim on behalf of the member.

Prior to April of 1999, the Defendants devised a scheme to make their chiropractic business more profitable by hiring physicians and using the name and professional status of the physician to organize professional corporations that were actually owned and controlled by the Defendants, although the physicians were shown on the incorporating documents as the owner. Claims for medical services (in addition to chiropractic services) were submitted to HealthGuard under the name and provider number of the physician. Physicians can submit claims for more extensive services at a higher reimbursement rate than can a chiropractor.

Mainline Medical Services, Inc. ("Mainline"), a management company owned and operated by the Gartenbergs, conducted extensive telemarketing to solicit patients for the professional corporations they created (i.e. Greenfield Sports Medicine and Rehab, P.C. and Premier Sports Medicine and Rehab Center, P.C.). Claims for services provided to HealthGuard members were processed and submitted to HealthGuard by Mainline. The claims were submitted by Mainline by mail or electronically. Many of the insurance claims were fraudulent. Each submission of a false claim through the mail

or through electronic means is an act of fraud; the coordinated and consistent effort to

submit multiple claims constitutes a pattern of fraud.

**IV. LIST OF MONETARY DAMAGES**

As a result of the Defendants submission of false claims, HealthGuard paid \$344,859 to Greenfield and Premier. The payments are itemized in the False Claims Reports which is attached to the Amended Complaint as Exhibit A and which is also attached to this Pretrial Memorandum as Exhibit A.

**V. LIST OF WITNESSES**

A. Liability

1. Susan Dillman, CFE  
Highmark, Inc.  
P.O. 890138  
Camp Hill, PA 17013

Ms. Dillman is a medical fraud investigator for Highmark, Inc. and participated in the investigation which gave rise to the causes of action asserted above.

2. Thomas P. Brennan, Jr.  
Highmark, Inc.  
P.O. Box 890138  
Camp Hill, PA 17013

Mr. Brennan is the Director of Special Investigations and supervised the investigation which gave rise to the causes of action asserted above.

3. Brian Wallace, D.C.  
State Route 322  
West Decatur, PA 16878

Dr. Wallace was a chiropractor employed by Premier and will testify to the activities he observed while employed.

4. Craig Colditz, D.C.  
112 Alexander Avenue  
Greensburg, PA 15601

Dr. Colditz is a chiropractor that was employed by Greenfield and will testify to the activities that he observed.

5. Dr. David Raab  
3750 Daryl Drive  
Landisville, PA 17538

Dr. Raab was a physician employed by the Defendants and was the nominal owner of Greenfield Sports Medicine and Rehab, P.C.

6. Dr. Leilani Gyening  
8 Angel Island Circle  
Sacramento, CA 95831

Dr. Gyening was a physician employed by the Defendants and was the nominal owner of Premier Medicine and Rehab Center, P.C.

7. Dr. Laura M. Shymansky, M.D.  
East Suburban Rehabilitation Associates, Inc.  
2380 McGinley Road  
Monroeville, PA

Dr. Shymansky is an expert who has reviewed the patient records produced by the Defendants and will render opinions as to claims submitted to and paid

by HealthGuard.

**B. Damages**

1. Dr. Laura M. Shymansky, M.D.  
East Suburban Rehabilitation Associates, Inc.  
2380 McGinley Road  
Monroeville, PA

Dr. Shymansky is an expert who reviewed the patient records provided by the Defendants and will render opinions as to the claims submitted to and paid by HealthGuard.

2. Andrea Shanamon Russo  
HealthGuard of Lancaster, Inc.  
280 Granite Run  
Lancaster, PA

Ms. Shanamon is a claims representative of HealthGuard and will testify about HealthGuard's payment of claims submitted by Greenfield Sports Medicine and Premier Sports Medicine.

**VI. SCHEDULE OF EXHIBITS**

<b><u>Exhibit Number</u></b>	<b><u>Description of Document</u></b>	<b><u>Document Reference Number</u></b>
1.	HealthGuard Group Health Care Service Agreement 1999	HG006130-HG006154
2.	HealthGuard Group Health Care Benefits Services Agreement 2000-2001 Covered Benefits & Exclusions & Limitations	HG006155-HG006190 HG006191-HG006225
3.	Plan Document and Summary Plan Description for	

	Mount Joy Wire Corporation	HG006226-HG006304
4.	Plan Document and Summary Plan Description for Columbia Borough School District	HG006305-HG006379
5.	Plan Document and Summary Plan Description for Moravian Manors, Inc.	HG006380-HG006462
6.	Plan Document and Summary Plan Description for Willow Valley Associates, Inc	HG006463-HG006521
7.	Plan Document and Summary Plan Description for Steinman Enterprises	HG006522-HG006601
8.	Plan Document and Summary Plan Description for High Industries, Inc	HG006602-HG006683
9.	Armstrong Point-Of-Service Plan	HG006684-HG006742
10.	Plan Document and Summary Plan Description for Lancaster Laboratories	HG006743-HG006807
11.	Plan Document and Summary Plan Description for Sico Company	HG006808-HG006872
12.	Plan Document and Summary Plan Description for R. W. Sauder, Inc.	HG006873-HG006944
13.	Plan Document and Summary Plan Description for The School District of Lancaster	HG006945-HG007003
14.	Plan Document and Summary Plan Description for The School District of Lancaster	HG007004-HG007061
15.	Plan Document and Summary Plan Description for Willow Valley Retirement Communities	HG007062-HG007122
16.	Plan Document and Summary Plan Description for Manheim Township School District	HG007123-HG007195
17.	Plan Document and Summary Plan Description for G.D.C.C., Incorporated	HG007196-HG007250

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| 18. | Plan Document and Summary Plan Description for Solanco School District         | HG00-7251-HG007303                        |
| 19. | Form 1099 issued by HealthGuard for 1999 and 2000                              | HG00233-HG00240                           |
| 20. | HealthGuard cancelled checks issued to Greenfield and Premier                  | HG00242-HG00723                           |
| 21. | Claim forms submitted to HealthGuard   | HG01995-HG06129                           |
| 22. | False Claims Chart   | Exhibit A to Amended Complaint            |
| 23. | Corporate records of Greenfield  | Raab Deposition Exhibits 2, 3, 4, 5 and 6 |
| 25. | Employment Nonsolicitation Agreement provided to Dr. Raab by Steven Gartenberg |   |
| 26. | W2 forms submitted by Greenfield and Main Line to Jennifer Aquiline            |   |

**Patient records identified by HealthGuard member number**

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|-----|--------------|----------------------------------|
| 27. | 180322329-02 | GR0001-GR0030<br>HG01041-HG01083 |
| 28. | 484768869-04 | GR0034-GR0068<br>HG01365-HG01406 |
| 29. | 484768869-04 | GR0031-GR0033<br>HG01362-HG01364 |
| 30. | 484768869-04 | GR0069-GR0075<br>HG01407-HG01412 |
| 31. | 484768869-01 | GR0076-GR0144<br>HG01413-HG01489 |
| 32. | 180522772-02 |                                  |
| 33. | 188669732-01 | GR0152-GR0209                    |
| 34. | 166549891-01 |                                  |



35.	203326675-01	GR0210-GR0249 HG01490-HG01528
36.	186480502-02	GR0250-GR0270
37.	187349211-02	GR0271-GR0295
38.	180382480-02	GR0296-GR0311
39.	92428380-02	GR0312-GR0351 HG01084-HG01135
40.	063547682-01	GR0352-GR0354
41.	231197763-02	
42.	482503499	GR0355-GR0357 HG01136-HG01140
43.	188401807-01	GR0358-GR0379
44.	203528298-02	
45.	168427378-01	GR0380-GR0414 HG00844B-HG00902B
46.	184367635-01	GR0415-GR0445 HG01529-HG01570
47.	180421474-03	
48.	180421474-01	GR0446-GR0480
49.	209649519	GR0481-GR0507 HG01141-HG01185
50.	190465799-01	GR0508-GR0561
51.	174383688-01	GR0562-GR0627 HG00903B-HG00961 HG01571-HG01636
52.	257745051-01	GR0628-GR0630

53.	165321467-02	GR0631-GR0664 HG01186-HG01229
54.	175340299-01	GR0665-GR0697 HG00962-HG01009
55.	210386465-01	GR0698-GR0711
56.	184544042-01	GR0712-GR0729 HG01637-HG01660
57.	200488309-02	GR0730-GR0731
58.	203326672-02	GR0748-GR0781
59.	524669572-01	GR0782-GR0800
60.	190469444-01	
61.	190469444-01	GR0732-GR0747
62.	143762596-02	GR0801-GR0868 HG01661-HG01675
63.	143762596-01	GR0869-GR0958 HG091230-HG01292 HG01676-HG01701
64.	157441227-01	
65.	188667050-01	GR0959-GR0978
66.	192566164-01	GR0979-GR0991 HG01702-HG01737
67.	157323768-01	GR0992-GR1042 HG01293-HG01356
68.	061480804-02	GR1043-GR1057 HG01010-HG01030
69.	074528461-01	GR1058-GR1075

70.	358441713-01	
71.	192600135-01	
72.	165320903-02	GR1076-GR1115 HG01738-HG01793
73.	190487144-01	GR1116-GR1221
74.	555330686-02	HG01794-HG01902
75.	555330686-03	GR1241-GR1313 HG01903-HG01921
76.	555330686-03	GR1241-GR1313 HG01922-HG01968
77.	178405368-01	GR1375-GR1376 HG01031-HG01035 HG01357-HG01359
78.	206708780-01	GR1336-GR1374
79.	197366404-01	GR1314-GR1335
80.	186581013-03	GR1377-GR1399 HG01969-HG01982
81.	186581013-05	
82.	186581013-02	GR1400-GR1503 HG01983-HG01994

**VII. ESTIMATE OF THE NUMBER OF  
DAYS REQUIRED FOR TRIAL**

Seven (7) trial days

**VIII. SPECIAL COMMENTS REGARDING LEGAL ISSUES,  
STIPULATIONS, AMENDMENT OF PLEADINGS AND**

**OTHER APPROPRIATE MATTERS**

\_\_\_\_\_Presently pending before the Court is a Motion for Summary Judgment filed on behalf of the Defendants. HealthGuard will be filing a response opposing the Defendants' Motion.

It is anticipated that counsel for the parties will enter into a stipulation regarding the authenticity and admissibility of the patient records of Greenfield and Premier, the claims submitted by the Defendants to HealthGuard, and the records of payment of HealthGuard.

HARTMAN UNDERHILL & BRUBAKER LLP

By: \_\_\_\_\_

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Date: October 16, 2003

**CERTIFICATE OF SERVICE**

\_\_\_\_\_ I HEREBY CERTIFY that I am this day serving the foregoing Rule 16.1(c) Pretrial Memorandum of HealthGuard of Lancaster, Inc. upon the person and in the manner indicated below:

Service by First Class Mail, addressed as follows:

Richard P. Limburg, Esquire  
Obermayer Rebmann Maxwell & Hippel LLP  
One Penn Center - 19th Floor  
1617 John F. Kennedy Boulevard  
Philadelphia, PA 19103-1895

John W. Morris, Esquire  
1525 Locust Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102

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